STATE OF MICHIGAN

COURT OF APPEALS

GREGORY STEWART, BFC MANAGEMENT, and SESI MOUSAD,

Plaintiffs-Appellants,

v

CITY OF DETROIT, DETROIT DEPARTMENT OF BUILDINGS AND SAFETY ENGINEERING, DETROIT BOARD OF ZONING APPEALS, and CITY HEAT CABARET,

Defendants-Appellees.

UNPUBLISHED
March 4, 2008

No. 276720
Wayne Circuit Court
LC No. 06-635434-CZ

Before: Whitbeck, P.J., and Jansen and Davis, JJ.

PER CURIAM.

Plaintiffs appeal as of right the circuit court's order dismissing this case for want of standing and denying a request for a preliminary injunction. We affirm. This case is being decided without oral argument. MCR 7.214(E).

Defendant City Heat Cabaret is a business providing alcoholic beverages and topless dancing. Plaintiff Stewart resides within 300 feet of that facility, and plaintiffs Mousad and BFC Management operate a rival business nearby. According to plaintiffs, the owners of City Heat obtained a permit from defendant Department of Buildings and Safety Engineering for extensive renovations, and then substantially demolished the existing structure under a plan to rebuild with considerably greater ground-level floor space. City Heat maintained that because it would also be deleting its basement floor space from the plan, the renovations would actually result in an overall reduction in commercial floor space.

Maintaining that the City Heat project threatened to intensify a nonconforming use, plaintiffs attempted to persuade the municipal authorities to revoke the permit. Plaintiff Stewart applied to the Board of Safety Engineering to submit the matter for review to defendant Board of Zoning Appeals, but the Board of Safety Engineering refused accept the application on the ground that the permit for renovations was not subject to review because no zoning ordinances were implicated.

Plaintiff filed suit in the circuit court, seeking a writ of mandamus to compel revocation of the permit or submission of the matter to the Board of Zoning Appeals, and seeking a temporary restraining order enjoining further construction. Plaintiffs also sought declaratory and additional injunctive relief. The circuit court dismissed the suit on the ground that plaintiffs lacked standing to maintain it.

"Whether a party has standing to bring an action involves a question of law that is reviewed de novo." *In re KH*, 469 Mich 621, 627-628; 677 NW2d 800 (2004). For a plaintiff to have standing to press a civil claim, that plaintiff must have suffered an actual or imminent, concrete and particularized, invasion of a legally protected interest. *Lee v Macomb Co Bd of Comm'rs*, 464 Mich 726, 739-740; 629 NW2d 900 (2001); see also *Lujan v Defenders of Wildlife*, 504 US 555, 560-561; 112 S Ct 2130; 119 L Ed 2d 351 (1992).

MCL 125.3607(1) provides, "Any party aggrieved by any order, determination, or decision of any officer, agency, board, commission, zoning board of appeals, or legislative body of any local unit of government" made in connection with a zoning matter "may obtain a review in the circuit court . . . ." This Court has defined "aggrieved party" as a person "whose legal right is invaded by an action, or whose pecuniary interest is directly or adversely affected by a judgment or order." *Rymal v Baergen*, 262 Mich App 274, 319; 686 NW2d 241 (2004) (internal quotation marks and citations omitted). In the zoning context, however, to be an aggrieved party one must "allege and prove that he has suffered some special damages not common to other property owners similarly situated." *Unger v Forest Home Twp*, 65 Mich App 614, 617; 237 NW2d 582 (1975).

Plaintiffs assert that Stewart has standing simply because he owns a residence within 300 feet of the subject property. But plaintiffs support this assertion only by showing that Stewart, because of his proximity to the project, was entitled by city ordinance to written notice of hearings in connection with that property. Entitlement to notice of existing proceedings is not the same as standing to initiate litigation.

Plaintiffs additionally argue that, "increased numbers of patrons to a rebuilt, refurbished and/or expanded adult cabaret club, along with all activity related thereto, will damage Mr. Stewart and his property in a manner disparate from the public at large." However, general concerns relating to increases in traffic, or reductions in property values, do not bring standing. *Unger*, *supra* at 618. Further, plaintiffs' comparison of Stewart's interests to those of the public at large is inapt; the proper comparison is between Stewart and "other property owners similarly situated." *Id.* at 617. Plaintiffs protest, without elaboration, that "reestablishment, reconstruction, expansion and/or intensification will have a detrimental effect on the adjacent residential neighborhood in which Mr. Stewart resides." But plaintiffs merely present Stewart as one member of an affected community—not as a person suffering special damages unshared by his similarly situated neighbors. *Id.*

Concerning the remaining plaintiffs' competing business, plaintiffs assert that the City Heat project is "only blocks away" and that it will "directly affect" their business interests. However, a person's financial interest in the development of neighboring properties "is not the kind of legally protectable property right or privilege, the threatened interference with which grants standing to seek review." *Western Michigan Univ Bd of Trustees v Brink*, 81 Mich App 99, 105; 265 NW2d 56 (1978).

Because plaintiffs have failed to show that any of them is facing a concrete and particularized invasion of a legally protected interest, or that any of them will suffer special damages not common to similarly situated neighbors, the circuit court properly dismissed this case on the ground that plaintiffs lacked standing to sue.

Because plaintiffs have failed to show that that have standing, we need not separately consider whether the circuit court erred in refusing to grant their request for a preliminary injunction.

Affirmed.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Alton T. Davis